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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,378	01/28/2004	James W. Schick JR.	074309.000014	6676

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EXAMINER
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DIXON, ANNETTE FREDRICKA

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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12/19/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/641,378

Applicant(s)

SCHIEK, JAMES W.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This Office Action is in response to the amendment to the claims filed on August 28, 2007 and the request for continued examination filed on October 31, 2007.

Examiner acknowledges claims 1, 3-6, 18 and 19 are pending in this application.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

### ***Claim Objections***

3. Claims 1 and 5 are objected to because of the following informalities: Applicant appears to have misspellings within the claims. In claim 1, "waist" appears to be misspelled "wais" and "releasably" appears to be misspelled "relaeasbly". In claim 5, "pad" appears to be misspelled "paid". Applicant is advised by the Examiner to carefully examine if any other misspellings may be present within the claim language. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 3-6, 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No amendment may introduce new matter into the disclosure of an application after its filing date. MPEP §608.04.

Specifically, claims 1, 3, and 18 now recite the claim limitation of "abdominal support areas"; however, the originally filed disclosure does not provide evidence that Applicant possessed the newly claimed invention at the time the invention was filed. In fact, the original specification of the instant invention discloses a singular "enlarged abdominal pad 18". (Column 3, Line 65 and Figure 3). There is no specific recitation or support for a plurality of enlarged abdominal support areas; therefore, the subject matter added to the claims is considered new matter and must be cancelled from the claims.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 3-6, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, Claims 1 and 18 recite "a second fastener comprising a buckle through which the end of the elongated strap may pass...". However, Applicant has not disclosed whether the end in question is the free end or the secured end. From investigation of Applicant's drawings and specification, Examiner believes the end should be the free end; however, formal clarification is required from the Applicant.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 3-6, 18 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, Applicant recites numerous body parts such as "the waist of the wearer", "the abdomen of the wearer", "the back and abdominal walls of the wearer", and "the ribs and hips of the wearer". These clauses appear to positively recite a portion of the human body. Accordingly, claims 1, 3-6, 18 and 19 are considered to be directed to non-statutory subject matter. 1077 OG 24 (April 21, 1987). Applicant may overcome this rejection by recited "adapted to or configured to encircle the waist of the wearer", adapted to or configured to cover a portion of the abdomen of the wearer", adapted to or configured to cover the

back and abdominal walls of the wearer", and "adapted to or configured to be positioned opposite one and other and between the hips and ribs of the wearer."

***Claim Rejections - 35 USC § 103***

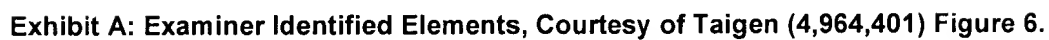
9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3-5, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taigen (4,964,401) in view of Woodhouse (WO 90/05502) and Johnston (4,528,700).

As to Claims 1 and 18, Taigen discloses a support belt adapted for encircling and being secured to the waist of the wearer for providing both back and abdominal support during strenuous activity (Abstract), while providing a non-interfering support and a non-interfering fit within the skeletal structure of the ribs and hips of the wearer, the belt comprising: an elongated base (10) having a longitudinal axis and opposite outer ends and of a length sufficient to encircle the waist of the wearer, the base including an enlarged back support area (32) in an intermediate area of the base (10) and enlarged abdominal support areas (represented by padded support found in Figure 6), each area of a first fixed predetermined vertical height and each area being integral with the base, the areas being disposed within the base such that the areas are opposite one another when the belt is encircling the waist of the wearer, with the abdominal support area (32)

covering a portion of the abdomen of the wearer and the back support area covering a portion of the back of the wearer. Taigen discloses an elongate strap (56) having opposite ends of flexible material having one end secured to the base (10) for defining a secured end of the elongate strap (represented by the attachment points at elements 46 and 30), such that the elongate strap extends along the longitudinal axis of the base (10) the opposite end of the elongate strap extending beyond one of the outer ends of the base for defining a free opposite end of the elongate strap (represented by the end of the strap, 56 comprising element 58). Taigen discloses a first fastener comprising a first pad portion (Exhibit A) adjacent the secured end of the elongated strap (via the connection to the body), a second pad portion adjacent to the free end of the strap (via the disconnection of the strap from the body thereby creating the free end), the first and second pad portions adapted to be placed in overlying, releasably secured Relationship with one another (via hook and loop fasteners 38 and 40).



Taigen discloses a second fastener comprising a buckle (50) through which the end of the elongate strap may pass so as to allow the second pad portion of the first fastener to be in overlying contact with the first pad portion of the fastener. Yet, Taigen does not teach reduced side areas or the use of a cinch slide in the buckle. However, at the time the invention was made the use of reduced side areas and cinch slides were known. Regarding the reduced side areas, Woodhouse teaches the use of reduced



side areas (the areas between the pads, 46 and 10) for the purpose of enabling the belt to be properly positioned around the waist of the wearer and advodiing the ribs (94), pelvic (96) and hips of the wearer. (Page 11, Line 23 thru Page 12, Line 20). Regarding the cinch slide, Johnston teaches the use of a cinch slide (the combination of elements 36 and 38 to the buckle (22) for the purpose of enabling the free end of the belt to be properly adjusted and maintain tightness. (Column 1, Lines 39-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Taigen to include the reduced sides, as taught by Woodhouse to provide patient comfort and ease in the utilization of the device, and to include the cinch slide, as taught by Johnson to provide additional retaining means for the free end of the strap.

As to Claims 3, 5, and 19, Taigen discloses the abdominal support areas (as seen in Figure 6), when in overlying relationship with one another have abutting surfaces, and wherein the first pad portion of the first fastener comprises a hook and loop fastener pad (38) and the second pad portion of the first fastener comprises a complementary hook and loop fastener pad (40) so that the belt may be secured to the waist of the user.

As to Claim 4, the system of Taigen/ Woodhouse /Johnson teaches a support belt having a back support area, an abdominal support area, and reduced side areas. Woodhouse teaches the abdominal support areas are between four and seven inches (Page 11, Line 23), yet does not expressly disclose the dimensions of the reduced side areas. However, the dimensions of the reduced side areas would have been an

obvious matter of design choice to one of ordinary skill in the art to have made the belt disclosed with the claimed dimensions or any other dimensions deemed appropriate to securely fit the support belt to a selected user (adolescent, man, woman, or elderly) As taught by Woodhouse, the purpose of the reduced side areas is to prevent the impingement of the ribs (94) and pelvic/hip (96) bones during operation of the device. (Page 12, Lines 4-20). Moreover, Applicant has not asserted the specific dimension of the reduced side area provides a particular advantage, solves a stated problem or serves a purpose, different from preventing the impingement of the ribs (94) and pelvic/hip (96) bones during operation of the device; thus, the use of the claimed dimensions lack criticality in its design.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taigen (4,964,401) in view of Woodhouse (WO 90/05502) and Johnston (4,528,700) as applied to claim 1 above, and further in view of Welsand (1,600,027).

As to Claim 6, the system of Taigen/ Woodhouse /Johnson teaches a support belt yet does not expressly disclose the use of utility rings secured to the belt at the reduced side areas for securing the belt directly to a harness or implement to be moved or lifted by the wearer for providing the use of the trunk of the body to aid in the activity with added safety. However, at the time the invention was made the use of utility belts were known. Specifically, Welsand teaches a support belt (10) having conventional utility rings (11) for securement and safety, capable of securing the belt directly to an implement to be moved or lifted. Therefore, it would have been obvious to one having

ordinary skill in the art at the time the invention was made to modify the system of Taigen/ Woodhouse /Johnson to include utility rings, as taught by Welsand to provide securement and safety to the support belt.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1, 3-6, 18, and 19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller (4,991,573), Akin et al. (4,976,257), Nelson (4,833,730), Welsh (4,545,370), and Bhattacharjee (GB 2215607).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Annette F Dixon  
Examiner  
Art Unit 3771



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12/18/07